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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,781	07/03/2001	Yoshiaki Komma	10873.759US01	1848
23552	7590	07/26/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			TRAN, THANG V	
			ART UNIT	PAPER NUMBER
			2653	7

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/898,781

**Applicant(s)**

KOMMA ET AL.

**Examiner**

Thang V. Tran

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 and 39-59 is/are pending in the application.  
4a) Of the above claim(s) 39-41 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-6,9-17,20-28,31-34 and 42-59 is/are rejected.  
7) ☒ Claim(s) 7,8,18,19,29 and 30 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

In response to an amendment dated 06/25/04, a supplemental Office action issued as follow:

***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- a. See Figs. 1-16 where claims 1-34 and 42-58 are read on.
- b. See Fig. 19 where claims 39-41 are read on.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims is considered as generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the

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examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Douglas P. Mueller on 06/25/04 a provisional election was made without traverse to prosecute the invention of group a, claims 1-34 and 42-58. Affirmation of this election must be made by applicant in replying to this Office action. Claims 39-41 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 3, 6, 9 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Funato (US 6,072,579).

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Funato, according to Figs. 1A-10, shows an optical apparatus comprising: a first light source (2) with a first wavelength (L2); a second light source (2) with a second wavelength (L1); a converging optical system (6); a diffractive element (9); and a photo detecting portion (10) including a first photo detecting portion (E-H) and a second photo detecting portion (A-D), and wherein when information reproduction is carried out by a light with the first wavelength (L2), signals obtained from regions (E-H) of the first photo detecting portion are calculated to detect a focus error signal (see column 7, lines 53-65), and when information reproduction is carried out by a light with the second wavelength (L1), signals obtained from regions (A-D) of the second photo detecting portion are calculated to detect a focus error signal (see column 7, lines 41-52), as recited in claim 3.

Regarding claim 6, see Figs. 7 and 8.

Regarding claim 9, see column 5, lines 22-28.

Regarding claim 11, the features recited in claim are inherently included in the apparatus of Funato in order to move the apparatus to access the disk and to rotate the disk.

6. Claims 1-6, 9-17, 20-28, 31-34 and 42-59 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Ohyama (US 6,512,608).

Ohyama, according to Figs. 2-24 clearly shown all features as recited in the instant claimed invention (see Figs. 2-24 and their respective disclosure for details).

***Allowable Subject Matter***

7. Claims 7, 8, 18, 19, 29 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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8. Claims 7, 8, 18, 19, 29 and 30 are allowable over the prior art of record because the prior art of record, considered in combination or individually, fails to suggest or fair teach the use of all limitations as recited in each of claims 7, 18 and 29. claims 8, 19 and 30 are allowable with their respective parent claim.

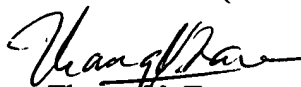
*Response to Arguments*

9. Applicant's arguments with respect to claimed invention have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thang V. Tran whose telephone number is (703) 308-1551. The examiner can normally be reached on Tuesday to Friday, from 7:30AM to 6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Korzuch can be reached on (703) 305-6137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Thang V. Tran  
Primary Examiner  
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